

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PANORAMA PRODUCTS, INC.) No. **78A-112**

Appearances:

For Appellant: Donald E. Brodeur
Attorney at Law

Harold Chapman
Certified Public Accountant

For Respondent: Mark **McEvilly**
Counsel

O P I N I O N

This appeal is made pursuant to section **25666^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Panorama Products, Inc., against a proposed assessment of additional franchise tax in the amount of **\$6,905.35** for the income year ended March 31, 1976.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the income year in issue.

Appeal of Panorama Products, Inc.

The issue presented in this appeal is whether . . . certain payments appellant made **to** its sole shareholder were deductible as rental expenses.

Appellant, Panorama Products, Inc. (Panorama), is a California corporation engaged in the manufacture and sale of truck campers and shells. It has manufacturing operations in three locations. **J. T. Bellew** is the sole shareholder of **panorama** and owner of the real estate upon which its plants are built.

On its franchise tax return for the year at issue, Panorama claimed a deduction in the amount of **\$104,543.54**, which it contends was paid to Mr. **Bellew** for the use of the property on which the plants were located. Respondent determined that this amount was not a deductible rental expense and issued a proposed **assessment** reflecting that determination. After considering appellant's protest, respondent affirmed its proposed assessment, leading to this appeal.

Deductions are a matter of legislative grace, and **it is** the taxpayer's burden to prove that he is entitled to the claimed deduction. (New Colonial Ice Co. v. Belvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)]; Appeal of John A. and Julie M. Richardson, Cal. St. Bd. of Equal., Oct. 28, 1980.) Rental expenses are deductible **only** if they **are** "required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which it has no equity." (Rev. & Tax. Code, **§ 24343, subd. (a)(2).**)

We agree with respondent's contention that appellant has **failed to** prove that the payments it made to Mr. Bellew were, in fact, made as a condition to the continued use of the property. There was no written rental agreement between appellant and Mr. Bellew. Appellant has presented corporate minutes dated November 1, 1974, which authorize the board of directors to rent the properties **from** Mr. Bellew for \$10,000 per month and minutes dated November 3, 1975, which authorize the board **to** pay \$100,000 per year plus real estate taxes for the use of the property. Although these minutes indicate that appellant's board of directors may have intended **to pay** rent for the use of Mr. **Bellew's** properties, they neither obligate appellant to pay any rent nor establish that rent was actually paid. Appellant has put into evidence copies of canceled checks payable to Mr. Bellew, which it contends represent the rental payments. These

Appeal of Panorama Products, Inc.

not only fail to establish that rent was paid, but actually indicate that the payments in question were not intended to be rental payments. These checks do not total the amount appellant claims was paid as rent. Furthermore, the checks show that the payments were not made at regular intervals and in regular amounts, as rent payments would normally be. Finally, most of the checks are marked as being "repayment on money advanced,"@ and the payments were charged to appellant's notes payable account rather than its rental expense account. Appellant contends that this was merely a bookkeeping error which was later corrected, but we cannot accept this explanation in light of the fact that Mr. Bellew himself signed the checks, which were clearly marked as representing a repayment **of advances**. Under these circumstances, we find that the payments were not rental payments. Therefore, respondent properly disallowed the claimed rental expense deduction.

For the above reasons, respondent's action must be sustained.

Appeal of Panorama Products, Inc.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Panorama Products, Inc., against a proposed assessment of additional franchise tax in the amount of **\$6,905.35** for the income year ended March 31, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day Of August , 1975, by the State Board of Equalization, with Board **Members** Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____	, Chairman
Conway H. Collis	Member
Richard Nevins	Member
Walter Harvey*	Member
_____	Member

*For Kenneth Cory, per Government Code section 7.9